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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10947 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MEDHASAN GRAM PANCHAYAT

Versus

PANDYA KANCHANBEN SHANKERLAL

Appearance:

MR PS CHARI for Petitioner

MR DN PANDYA for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision:29/07/98

CAV JUDGEMENT

#. Civil Application is filed by the Respondent. This Civil Application and the main petition are heard together and they are being disposed of by this common judgment.

#. Medhasan Gram Panchayat has filed the main petition to challenge the award passed by the labour

court, Ahmedabad in Reference No.992 of 1993 and the order passed in Misc. Application No.22 of 1995 in Reference No.992/1993 whereas the Civil Application No : 1391 of 1998 is filed by Respondent Kanchanben Shankarlal Pandya seeking the vacation of the stay order and to award wages under Section.17 B of the Industrial Disputes Act,1947.

#. Respondent Kanchanben Shankarlal was working as a Head-mistress in the BAL MANDIR run by the petitioner Gram Panchayat since 1-2-1977. The respondent had sent an application seeking leave from 1-7-1992 to 30-12-92 and did not attend her duty though there was no sanction of leave sought. But even after 30-12-92, she did not resume her duty. Then on 4-8-1992 a show cause notice was issued to her as to why her service should not be terminated. Thereafter on 30-9-1992 the Gram Panchayat passed a resolution terminating her services. Thereafter the respondent Kanchanben approached but she was not taken on her job. She thereafter raised an industrial dispute. Hence the reference No.992/1993 was referred to the Labour Court at Ahmedabad.

#. Said reference was adjudicated by the labour court, Ahmedabad and he was pleased to allow the same by passing an exparte award on 5-8-1994. The petitioner had filed Special Civil Application No.1132 of 1995 to challenge the said exparte award. But the petitioner was advised to file application under Rule 26 A before the Labour court hence he withdrew that petition in order to file such application. Accordingly he filed Misc. Civil Application No.62/95. The labour court was pleased to reject the same on 8-11-1995. Hence the petitioner has come before this court.

#. The learned advocate for the petitioner urged before me that the award in question is illegal and invalid. He urged before me that the respondent was admittedly working as a teacher. She was holding the post of Head Mistress when her services were brought to an end. Mr.Chari urged before me that a teacher cannot be a "workman". Consequently the dispute in question regarding the termination of the services between the petitioner and respondent could not be a dispute between an "employer" and a workman as contemplated by the Industrial Disputes Act,1947. Hence the labour court had no jurisdiction to decide the controversy / dispute as regards the termination of the services. He cited before me the case of A SUNDARAMBAL VS GOVT. OF GOA, DAMAN 7 DIU AIR 1988 S.C.1701. As against this learned advocate for the respondent Mr.Pandya urged before me that when

the Government had made the reference to the labour court under Section 10 of the Industrial Disputes Act,1947. this court must hold that the labour court had jurisdiction to entertain and decide the disputes. He further submitted that the employees of the Grampanchayat could be workman under Industrial Disputes Act,1947.

#. There is no dispute of the fact that Respondent KANCHANBEN was recruited as a teacher in the BALMANDIR run by the petitioner Gram Panchayat and at the time of her termination she was holding the post of Head-Mistress. As per the provisions of S.2(s) a person who is employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward would become a "workman". A teacher could not be said to be doing either manual or clerical work. If the nature and the manner of duties of a teacher whether primary or pre-primary it is impossible to say that it will fall in the category of either manual work or clerical work or technical work. The work which a teacher does is a noble work. They impart culture and education on young children and make them civilised and cultured citizens of the country. In the case of A. SUNDARAMBAL VS. GOVT OF GOA, DAMAN AND DIU AIR 1988 SC 1700 in para No.10 on page 1704 the Apex Court has observed as under :-

> "Imparting of education which is the main function of the teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or noble vocation. A teacher educates children, he moulds their culture, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work if any they do is only incidental to their principal work of teaching.' We agree with reasons given by the High Court for taking the view that the teachers can not be treated as "workmen" under the law. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in S.2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words "to do any skilled or unskilled manually ,

> supervisory, technical or clerical work". Meaningless. A liberal construction as suggested would have been possible only in the absence of the words. The decision in May and Baker (India) Ltd. Vs. Their Workmen (AIR 1976 S.C.-78) (Supra) precludes us from taking such a view. We therefore, hold that the High Court was right in holding that the appellant was not a 'workman' though the school was a industry in view of the definition of 'workmen' as it now stands".

The above quoted decision of the Apex Court does not permit to hold that the respondent was a workman. I therefore hold that the respondent Kanchanben is not a workman for labourer.

#. Mr.Pandya the learned advocate has contended that when the Government has made reference this court cannot hold that the reference was bad by holding that the labour court had no jurisdiction to entertain the dispute between the petitioner and the respondent. In support of his submission he cited before me the case of M/S AVON SERVICES PRODUCTION AGENCIES PVT (P)(II) VS. INDUSTRIAL TRIBUNAL AIR 1979 S.C. 1700. But the said case is not applicable to the facts of the case before me. In that case the questions as to power of State Government to make reference and validity of references are considered and decided.

#. Mr.Pandya learned advocate for the respondent has cited before me the case of DHARI GRAM PANCHAYAT VS. SAFAI KAMDAR MANDAL 1971 G.L.R.287. In that case Safai Kamdar are held to be workmen under Industrial Disputes Act,1947. But the said case has no application to the case in question.

#. Therefore in view of the fact the respondent is a teacher, the dispute regarding the termination of her services cannot be considered and decided by the labour court or Industrial Court. The Labour Court / Industrial Court has no jurisdiction to decide that dispute. She will have to go before the proper forum. If she cannot be go to school Tribunal as contended by Mr.pandya then she will have to go before the Civil Court. But in any case the Industrial Tribunal / Labour Court has no jurisdiction to decide her dispute. I therefore hold that the award passed by the labour court will have to be quashed and set aside.

##. The respondent has filed Civil Application No.1321 of 1998 under Section 17 B of Industrial Dispute Act. the petitioner has filed 10947/95 some time in December,1995 but the office objections were removed in January,1996. The petitioner has obtained stay for the implementation and execution of award. As there was award in favour of the respondent and as employer has preferred this writ petition before this court to challenge the award the petitiioner is liable to pay wages under Section 17 B of Industrial Tribunal Act,1947 during the pendency of this petition. For the purpose of the claim of wages to be paid to the person in whose favour the award is passed the validity or the legality is not be considered. The liability to pay the wages is till the date of decision of the writ petition. No discretion lies with the court for ordering payment under Section 17 B of Industrial Disputes Act. The liability of the employer to pay under Section 17 B arises as soon as the employee satisfactorily proves that employee had no employment in any establishment during that period. In the recent case of DENA BANK VS KIRISTKUMAR T. PATEL AIR 1998 S.C. 511 the Apex Court has considered the provisions of Section 17 B and its implications and has laid down following principles.

"Section 17 B by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving the challenge to the award of the labour court, Industrial Tribunal or the National Tribunal with the High Court or the Supreme Court which amount is not refundable or recoverable in the event of award being setaside, does not in any way preclude the High Court or Supreme Court to pass on order directing the payment of Higher amount to the workmen if such higher amount is considered necessary in the interest of the justice. Such direction would be dehors the provisions of Section 17 B and while giving such direction, the court may also give directions regarding the recovery of excess amount in the even of award being set aside. But we are unable to agree with the view of the Bombay high Court in ELPRO INTERNATIONAL LTD. (1987 Lab L.C.1468) that in exercise of powers under Article 226 and 136 of the

Constitution an order can be passed denying the workmen the benefit granted under Section 17 B. The right of workmen under Section 17 B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Article 226 and 136 of the Constitution."

##. Thus in view of the above quoted decision of the Supreme Court and the clear provisions of Section 17 B of Industrial Disputes Act and as the respondent stated on oath that she has no employment which is not controverted by the petition, her application will have to be allowed.

##. Though the petition was originally filed in Decmeber,1995, it came up before the court for first time in May,1996. The respondent also appeared in May,1996. Therefore the respondent is entitled to get the wages from May,1996 to July,1997. The respondent was drawing a salary of Rs.350/- per month as has been stated by the labour court in his judgment. The said fact that the respondent was getting Rs.350/- per month when her services brought to an end is stated on the statement on oath made by the respondent before him. Therefore she is entitled to get Rs.350/- for 27 months. The respondent is already paid Rs.5000/- as per the order passed on her application by way of interim relief. Therefore the said amount will have to be deducted. Thus, the respondent is entitled to get Rs.4450/- more. Mr. Pandya had argued that the Govt has passed a resolution on 1-8-1995 and the pay of teacher of Balmandir is fixed at Rs.600/- and therefore she should be paid at the rate of Rs.600/- but that claim of him could not be accepted in view of the statement on oath made by the respondent that the last pay drawn by her was Rs.350/- per month and under Section 17 B she is entitled to get the wages at rate of wages last drawn.

##. Thus the Special Civil Application filed by the petitioner is allowed and the award passed by the labour court in Reference No.992/93 on 5-8-1994 is quashed and set aside. Hence the rule is made absolute in the above terms. However the petitioner is directed to pay Rs.4450/within two weeks from today to the Respondent. In view of the above direction C.A.No.1391/1998 stands disposed of. Parties are directed to bear their respective cost in both proceedings.

Date : 29/7/1998 (S.D.Pandit, J.)

(KPP)